

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

SERGEY SPITSYN,

Plaintiff,

v.

RICHARD MORGAN, *et al*,

Defendants.

Case No. C04-5134FDB-KLS

ORDER DENYING PLAINTIFF'S  
MOTION TO AMEND  
COMPLAINT AND MOTION TO  
STRIKE DEFENDANTS'  
AMENDED ANSWER

This matter is before the Court on plaintiff's filing of a motion to amend his second amended complaint and motion to strike defendants' amended answer (Dkt. #124 and #128). This matter previously was stayed pending resolution of plaintiff's motion for recusal. (Dkt. #134 and #140). That motion now has been denied (Dkt. #144), and this matter therefore once more is before the undersigned. Accordingly, after reviewing plaintiff's motions and the balance of the record, the Court finds and orders as follows:

In his motion to amend his second amended complaint, plaintiff seeks to add certain language to one section of that complaint in response to the statement made by defendants in their amended answer that any recovery by plaintiff for damages he allegedly suffered is barred by his failure to mitigate those damages. (Dkt. #123). Failure to mitigate damages, however, is an affirmative defense with respect to which no response is required. Further, the specific language plaintiff seeks to add does not address the issue of failure to mitigate damages. For these reasons, plaintiff's motion to amend his second amended

1 complaint (Dkt. #124) hereby is DENIED.

2 In regard to plaintiff's motion to strike defendants' amended answer, the Court notes that in his  
3 reply to defendants' response to that motion, plaintiff requests that the motion be withdrawn. The Court  
4 hereby grants plaintiff's request, and for that reason his motion to strike defendants' amended answer (Dkt.  
5 #128) hereby is DENIED as well.

6 The Clerk is directed to send a copy of this Order to plaintiff and counsel for defendants.

7 DATED this 15th day of March, 2007.

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11 Karen L. Strombom  
12 United States Magistrate Judge  
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